

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Breaks Post Office
(Breaks, Virginia)

Docket No. A2011-88

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(December 1, 2011)

I. INTRODUCTION AND BACKGROUND

On September 28, 2011, the Commission docketed the petition for review of the closing of the Breaks Post Office.¹ On September 28, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on October 11, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination, Postal Service Docket Number 1355731-24607.³

Three Petitioners, Keith Mullins, Wayne Cline Jr., and James L. Childress, have filed Participant Statements in lieu of formal legal briefs in which they set forth their objections to the closure of the Breaks Post Office.⁴ The Postal Service filed comments supporting its closure determination on November 17, 2011, in lieu of a legal brief.⁵

¹ Petition for Review Received from K. Mullins Regarding the Breaks, VA Post Office 24607, September 23, 2011. (Petition)

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 28, 2011. (Order No. 880).

³ Administrative record concerning the Final Determination to Close the Breaks, Virginia Post Office and Establish Service by Community Post Office, October 11, 2011. (AR)

⁴ Participant Statement of James L. Childress, October 25, 2011; Participant Statement of Keith Mullins, October 25, 2011; and Participant Statement of Wayne Cline Jr., October 18, 2011. (Participant Statements)

⁵ United States Postal Service Comments Regarding Appeal, November 17, 2011. (Postal Service Comments).

II. STATEMENT OF FACTS

The Breaks Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office in Breaks, Virginia, in Buchanan County. AR Item No. 1 at 2. Before being closed the Breaks Post Office provided service to 208 post office box and retail customers who engaged in an average of 17 daily window transactions. AR Item No. 13, and Final Determination(FD).

On December 21, 2010, the Manager of Postal Operations requested permission to investigate the possible closure of the Breaks Post Office. AR Item No. 1 at 1. The request was granted. *Id.*

On March 18, 2011, the Postal Service notified customers of the Breaks Post Office of a "possible change in the way your postal service is provided." AR Item No. 21 at 1. As described in the notice, customers were given the option of receiving pickup, delivery, sale of stamps and all other customary postal Services from the Maxie Post Office located 8.0 miles away. *Id.* Included was a questionnaire to be completed and returned by April 6, 2011. *Id.* In addition, customers were invited to attend a public meeting on April 6, 2011, at which Postal Service representatives would be available to answer questions and provide information about postal service. *Id.*

Of the 230 questionnaires distributed by the Postal Service, 58 were completed and returned: 8 responded favorably to the proposal; 20 expressed opposition or concern; and 30 expressed no opinion. AR Item No. 23 at 1. The meeting was held on April 6, 2011, as scheduled with 110 customers in attendance. Item No. 24 at 1.

On August 1, 2011, a formal proposal to close the Breaks Post Office was forwarded to that post office for posting for a period of sixty days. AR Item Nos. 35, 37. An invitation to file comments was also posted in the Breaks Post Office. *Id.* Seventeen comments were received during the posting period that ended August 2, 2011. AR Item No. 40.

On August 30, 2011, the Final Determination to close the Breaks Post Office was approved. AR Item No. 48. The decision was based upon (1) postmaster vacancy; (2)

workload and revenue decline; and (3) minimum number of daily retail transactions. *Id.* The Final Determination did consider and respond to various concerns expressed by postal customers at the April 6, 2011 public meeting. *Id.*

III. POSITIONS OF THE PARTIES

A. The Petitioners

In the Petitions, the Petitioners present five arguments in opposition to the closing of the Breaks Post Office: (1) effect on community; (2) effect on employees; (3) procedure not followed; (4) economic factors/cost savings; and (5) adequacy of alternative communications and postal services. Participant Statements.

B. The Postal Service

On November 17, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 880. In that filing, the Postal Service supports its decision to close Breaks Post Office, on the basis that: (1) the Maxie Post Office is eight miles away; (2) carrier service is an adequate alternative; (3) in hardship situations the carrier can make delivery to the home; (4) the cost to install a mailbox is not unreasonable; and (5) the Breaks community revolves on the Breaks Interstate Park and Breaks' place on the Coal Heritage Trail, not the Breaks Post Office. Postal Service Comments at 5.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.⁶

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Breaks Post Office, and the Postal Service Comments,

⁶ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. The petitioner in this proceeding did not request suspension of the closure of the Breaks Post Office.

the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Breaks Post Office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence.

Although the Postal Service has followed applicable procedures, there is at least one instance where the Postal Service's facts are unsupported. The economic savings include a \$33,168 salary for the postmaster, but the Postal Service indicates that the Postmaster retired in 2009, and is currently replaced by a lower paid employee. Therefore, the economic savings claimed by the Postal Service may be overestimated.

VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Breaks Post Office should be affirmed.

Respectfully Submitted,

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